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3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION
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7 SIEHNA M. COTTON, a minor, by and
8 Megan McClure, her guardian ad litem; and
9 MARTIN COTTON, SR., an individual,

10 Plaintiffs,

11 vs.

12 CITY OF EUREKA, CALIFORNIA, a
13 political subdivision of the State of California,
14 COUNTY OF HUMBOLDT, CALIFORNIA,
15 a political subdivision of the State of
16 California, et al.,

17 Defendants.

Case No: C 08-04386 SBA

**ORDER RE FAILURE TO TRAIN
CLAIM**

18 The Court ordered supplemental briefing regarding whether Plaintiffs' expert Roger
19 Clark timely disclosed any opinion regarding the adequacy of the City's training program
20 as it relates to seeking medical care for arrestees who have been subjected to the use of
21 force. 9/8/11 Order at 8, Dkt. 212. In their supplemental briefing, Plaintiffs contend that
22 Mr. Clark made the requisite disclosure in his Expert Report, wherein he stated that, "Mr.
23 Cotton was not medically cleared for booking *as required by POST and EPD ... policy and
24 procedure.*" Clark Report ¶ 3 (emphasis added), Dkt. 118-1. Yet, at the pretrial conference
25 held on September 6, 2011, Plaintiffs stated that their failure to train claim is based on *the
26 City's lack of any training or policy* regarding obtaining medical care for arrestees who had
27 been subjected to the application of force by City police officers. Nowhere in his report did
28 Mr. Clark opine that the Decedent died as a result a *lack of any policy or training*. Nor is
such an opinion disclosed in the deposition excerpts cited by Plaintiffs. See Clark Depo. at
13:22-14:6, 119:2-121:3, Dkt. 118-8. Because no such opinion was disclosed, Mr. Clark

1 will not be allowed to offer any opinion testimony in support of Plaintiff's failure to train
2 claim with respect to the lack of training or policies.

3 Nonetheless, the Court is persuaded that Plaintiffs may present their failure to train
4 claim at trial without relying on Mr. Clark's expert testimony. According to the Plaintiffs,
5 the Defendant officers have acknowledged that, at the time of the incident, they did not
6 have any training on obtaining medical attention for a person who had been subjected to the
7 use of force. "A plaintiff [] might succeed in proving a failure-to-train claim without
8 showing a pattern of constitutional violations where 'a violation of federal rights may be a
9 highly predictable consequence of a failure to equip law enforcement officers with specific
10 tools to handle recurring situations.'" See Long v. Cnty. of Los Angeles, 442 F.3d 1178,
11 1185 (9th Cir. 2006)) (quoting Bd. of Cnty. Comm'rs v. Brown, 520 U.S. 397, 409 (1997)).
12 Based on this testimony, a trier of fact could conclude that the City's failure to train was the
13 "moving force [behind] the constitutional violation." City of Canton, Ohio v. Harris, 489
14 U.S. 378, 389 (1989).

15 IT IS SO ORDERED.

16 Dated: September 12, 2011

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18 SAUNDRA BROWN ARMSTRONG
19 United States District Judge
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